

## REMARKS

### *Allowable Subject Matter*

Applicant acknowledges with appreciation that claims 4-11 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

### *Claim Rejections - 35 U.S.C. §102(e)*

Claims 1-3 and 12 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by United States Patent No. 6,536,428 to Smith. Reconsideration and withdrawal of this rejection is requested.

Applicant has carefully reviewed the Examiner's rejection and Smith. Applicant submits that it is unclear as to exactly what features of Smith the Examiner is equating with a heater that is partially covered with an outer *hydrophilic* layer.

With regard to claim 1, the Examiner points to Figure 2 and Col. 3, lines 60-67 and Col. 4, lines 1-28 for support. Applicant has studied these sections (and the entire reference), and has found no suggestion of the heater being covered by two layers. Applicant has found no disclosure of the specific arrangement of layers as claimed being "covered with an inner electrical insulating layer and *at least partially covered with an outer hydrophilic layer.*" Smith states that "The heating wire 12 may be, for example, an electrical resistive heater wire covered with a thermoplastic insulating layer", see in Col. 3, lines 28-29.

Smith is directed to a configuration of the space between the inner tube and the surrounding tube to pass inhalation gases. Smith does disclose that the heating wire may be covered with a thermoplastic insulating layer, but Applicant found no disclosure or suggestion in

Smith of an *outer hydrophilic layer* which at least partially covers this thermoplastic insulating layer. Applicant therefore submits that Smith does not anticipate claim 1 as alleged by the Examiner.

The Examiner alleges that Smith teaches an apparatus wherein the hydrophilic layer is formed so as to absorb water due to its structure. In support of this allegation, the Examiner refers to Fig. 2 and Col. 4, lines 1-30. However, as noted above, Applicant found no disclosure or suggestion of a hydrophilic layer. Applicant is unsure which feature of Smith the Examiner equates with a hydrophilic layer (at least partially) covering the heater wire as claimed.

Perhaps the Examiner is suggesting that ribs 13 might absorb water due to their structure. If this were the case, Applicant notes that ribs 13 are part of the outer wall of the conduit (see Figs. 2 and 3) and therefore do not meet the claim language. Applicant submits that the claimed “covering layer” (of the heater) is distinguished from the wall (of the conduit). Applicant therefore submits that Smith does not anticipate claim 2 as alleged. Further, Applicant is of the opinion that the widely-spaced ribs 13 are not capable of absorbing water due to their structure, and Applicant found no disclosure in Smith suggesting otherwise. Applicant therefore submits that Smith document does not anticipate the present claims.

Reconsideration and withdrawal of the rejection and allowance is requested.

#### ***Terminal Disclaimer***

In the Office Action dated March 22, 2007, the Examiner stated that the “terminal disclaimer filed on December 29<sup>th</sup>, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of October 14, 2003 has been

reviewed and accepted.” This Terminal Disclaimer relates to United States Patent No. 6,662,802. Applicant notes that the ‘802 patent expires on June 21, 2021 (Applicant does not believe that the ‘802 patent itself is subject to a Terminal Disclaimer). Therefore, Applicant is unsure as to why the Examiner asserts an “October 14, 2003” date, and requests clarification as to the term of any patent granted on this application.

***Information Disclosure Statement***

Applicant again acknowledges receipt of the partially initialed form in the Office Action dated October 2, 2006 relating to the Information Disclosure Statement filed on December 3, 2003. Applicant again notes that Sheet 2 of 2 of the Information Disclosure Statement filed on December 3, 2003 was returned with the Office Action, but was not initialed. Applicant requests confirmation of consideration of these references by return of the initialed Sheet 2 of 2.

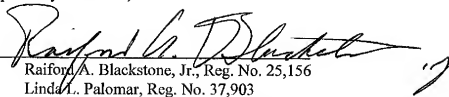
Should the Examiner have any questions regarding this Amendment, the Examiner is invited to contact one of the undersigned attorneys at (312) 704-1890.

Respectfully submitted,

Dated:

Feb 6, 2008

By:



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